

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for the establishment of a Federal clean portfolio standard.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2191

To direct the Administrator of the Environmental Protection Agency to establish a program to decrease emissions of greenhouse gases, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CRAIG

Viz:

1 At the end of title V, add the following:

2 **Subtitle C—Federal Clean Portfolio**
3 **Standard**

4 **SEC. 5301. FEDERAL CLEAN PORTFOLIO STANDARD.**

5 (a) IN GENERAL.—Title VI of the Public Utility Reg-
6 ulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is
7 amended by adding at the end the following:

8 **“SEC. 610. FEDERAL CLEAN PORTFOLIO STANDARD.**

9 “(a) CLEAN ENERGY REQUIREMENT.—

1 “(1) IN GENERAL.—Each electric utility that
 2 sells electricity to electric consumers shall obtain a
 3 percentage of the base amount of electricity it sells
 4 to electric consumers in any calendar year from new
 5 clean energy or existing clean energy. The percent-
 6 age obtained in a calendar year shall not be less
 7 than the amount specified in the following table:

“Calendar year:	Minimum annual percentage:
2010 through 2012	5
2013 through 2016	10
2017 through 2019	15
2020 through 2030	20

8 “(2) MEANS OF COMPLIANCE.—An electric util-
 9 ity shall meet the requirements of paragraph (1)
 10 by—

11 “(A) submitting to the Secretary clean en-
 12 ergy credits issued under subsection (b);

13 “(B) making alternative compliance pay-
 14 ments to the Secretary at the rate of 2 cents
 15 per kilowatt hour (as adjusted for inflation
 16 under subsection (g)); or

17 “(C) a combination of activities described
 18 in subparagraphs (A) and (B).

19 “(b) CLEAN ENERGY CREDIT TRADING PROGRAM.—

20 “(1) IN GENERAL.—Not later than July 1,
 21 2009, the Secretary shall establish a clean energy

1 credit trading program under which electric utilities
2 shall submit to the Secretary clean energy credits to
3 certify the compliance of the electric utilities with re-
4 spect to obligations under subsection (a)(1).

5 “(2) ADMINISTRATION.—As part of the pro-
6 gram, the Secretary shall—

7 “(A) issue tradeable clean energy credits to
8 generators of electric energy from new clean en-
9 ergy;

10 “(B) issue nontradeable clean energy cred-
11 its to generators of electric energy from existing
12 clean energy;

13 “(C) issue clean energy credits to electric
14 utilities associated with State portfolio standard
15 compliance mechanisms pursuant to paragraph
16 (6);

17 “(D) ensure that a kilowatt hour, including
18 the associated clean energy credit, shall be used
19 only once for purposes of compliance with this
20 Act;

21 “(E) allow double credits for generation
22 from facilities on Indian land, and triple credits
23 for generation from small renewable distributed
24 generators (meaning those no larger than 1
25 megawatt); and

1 “(F) ensure that, with respect to a pur-
2 chaser that, as of the date of enactment of this
3 section, has a purchase agreement from a clean
4 energy facility placed in service before that
5 date, the credit associated with the generation
6 of clean energy under the contract is issued to
7 the purchaser of the electric energy, to the ex-
8 tent that the contract does not already provide
9 for the allocation of the credit.

10 “(3) DURATION.—A credit described in sub-
11 paragraph (A), (B), or (C) of paragraph (2) may
12 only be used for compliance with this section during
13 the 3-year period beginning on the date of issuance
14 of the credit.

15 “(4) TRANSFERS.—An electric utility that holds
16 credits in excess of the quantity of credits needed to
17 comply with subsection (a) may transfer the credits
18 to another electric utility in the same utility holding
19 company system.

20 “(5) DELEGATION OF MARKET FUNCTION.—
21 The Secretary may delegate to an appropriate mar-
22 ket-making entity the administration of a national
23 tradeable clean energy credit market for purposes of
24 creating a transparent national market for the sale
25 or trade of clean energy credits.

1 “(6) CREDIT FOR STATE ALTERNATIVE COMPLI-
2 ANCE PAYMENTS AND OTHER FINANCIAL COMPLI-
3 ANCE MECHANISMS.—

4 “(A) IN GENERAL.—In the case of an elec-
5 tric utility subject to a State portfolio standard
6 program that requires the generation of elec-
7 tricity from clean energy and makes alternative
8 compliance payments under the program in sat-
9 isfaction of applicable State requirements or
10 complies by other financial mechanisms, the
11 Secretary shall issue clean energy credits to the
12 electric utility in an amount that corresponds to
13 the amount of the State alternative compliance
14 payment or other financial compliance mecha-
15 nism as though that payment or mechanism
16 had been made to the Secretary under this sub-
17 section.

18 “(B) APPLICATION.—A clean energy credit
19 issued under subparagraph (A) may be—

20 “(i) applied against the required an-
21 nual percentage of an electric utility; or

22 “(ii) transferred for use only by an
23 associate company of the electric utility.

24 “(c) ENFORCEMENT.—

1 “(1) CIVIL PENALTIES.—Any electric utility
2 that fails to meet the compliance requirements of
3 subsection (a) shall be subject to a civil penalty.

4 “(2) AMOUNT OF PENALTY.—The amount of
5 the civil penalty shall be determined by multiplying
6 the number of kilowatt-hours of electric energy sold
7 to electric consumers in violation of subsection (a)
8 by the greater of—

9 “(A) the value of the alternative compli-
10 ance payment, as adjusted to reflect changes
11 for the 12-month period ending the preceding
12 November 30 in the Consumer Price Index for
13 All Urban Consumers published by the Bureau
14 of Labor Statistics of the Department of Labor;
15 or

16 “(B) 200 percent of the average market
17 value of clean energy credits during the year in
18 which the violation occurred.

19 “(3) PROCEDURE FOR ASSESSING PENALTY.—
20 Subject to subsection (h)(2), the Secretary shall as-
21 sess a civil penalty under this subsection in accord-
22 ance with the procedures prescribed by section
23 333(d) of the Energy Policy and Conservation Act
24 of 1954 (42 U.S.C. 6303).

25 “(d) STATE CLEAN ENERGY ACCOUNT PROGRAM.—

1 “(1) IN GENERAL.—There is established in the
2 Treasury a State clean energy account program.

3 “(2) DEPOSITS.—All money collected by the
4 Secretary from the sale of clean energy credits, the
5 provision of alternative compliance payments, and
6 the assessment of civil penalties under this section
7 shall be deposited into the clean energy account es-
8 tablished pursuant to this subsection.

9 “(3) TRANSFER.—Amounts deposited in the
10 State clean energy account shall be transferred, sub-
11 ject to appropriations, to the State in which the
12 amounts were collected.

13 “(4) USE.—Amounts transferred to a State
14 under paragraph (3) shall be used by the State for
15 the purposes of promoting clean energy production,
16 including programs that promote technologies that
17 reduce the use of electricity at customer sites.

18 “(e) RULES.—The Secretary shall issue rules imple-
19 menting this section not later than 1 year after the date
20 of enactment of this section.

21 “(f) EXEMPTIONS.—This section shall not apply in
22 any calendar year to an electric utility—

23 “(1) that sold less than 4,000,000 megawatt-
24 hours of electric energy to electric consumers during
25 the preceding calendar year; or

1 “(2) in Hawaii.

2 “(g) INFLATION ADJUSTMENT.—Not later than De-
3 cember 31 of each year beginning in 2008, the Secretary
4 shall adjust for inflation the rate of alternative compliance
5 payments under subsection (a)(2)(B) and the amount of
6 the civil penalty per kilowatt-hour under subsection (c)(2).

7 “(h) WAIVER.—

8 “(1) IN GENERAL.—The Secretary may waive
9 the compliance requirements of subsection (a) with
10 respect to an electric utility if the Secretary deter-
11 mines that the electric utility cannot meet the re-
12 quirements for reason of force majeure in effect on
13 any date after the date that is 5 years before the
14 date of enactment of this section.

15 “(2) CIVIL PENALTIES.—

16 “(A) IN GENERAL.—The Secretary may
17 mitigate or waive a civil penalty under sub-
18 section (c) if the electric utility was unable to
19 comply with subsection (a) for reasons outside
20 of the reasonable control of the utility in effect
21 after the date of enactment of this section.

22 “(B) AMOUNT OF REDUCTION.—The Sec-
23 retary shall reduce the amount of any penalty
24 determined under subsection (c)(2) by an
25 amount paid by the electric utility to a State

1 for failure to comply with the requirement of a
2 State clean energy program.

3 “(i) GOVERNOR CERTIFICATION.—On submission by
4 the Governor of a State to the Secretary of a notification
5 that the State has in effect, and is enforcing, a State port-
6 folio standard that substantially contributes to the overall
7 goals of the Federal clean portfolio standard under this
8 section, the State may elect not to participate in the pro-
9 gram under this section.

10 “(j) DEFINITIONS.—In this section:

11 “(1) BASE AMOUNT OF ELECTRICITY.—The
12 term ‘base amount of electricity’ means the total
13 amount of electricity sold by an electric utility to
14 electric consumers in a calendar year, excluding—

15 “(A) electricity generated by a hydro-
16 electric facility (including a pumped storage fa-
17 cility but excluding incremental hydropower);

18 “(B) electricity generated through the in-
19 cineration of municipal solid waste; and

20 “(C) electricity generated from nuclear
21 power.

22 “(2) DEMAND RESPONSE.—The term ‘demand
23 response’ means a reduction in electricity usage by
24 end-use customers as compared to the normal con-
25 sumption patterns of the customers, or shifts in elec-

1 tric usage by end-use customers from on-peak hours
2 of an electric utility to off-peak hours of an electric
3 utility that do not result in increased usage, in re-
4 sponse to an incentive payment or a program to re-
5 duce electricity use at any time at which—

6 “(A) wholesale market prices are high; or

7 “(B) system reliability is jeopardized.

8 “(3) DISTRIBUTED GENERATION FACILITY.—

9 The term ‘distributed generation facility’ means a
10 facility at a customer site.

11 “(4) ENERGY EFFICIENCY.—The term ‘energy
12 efficiency’ means—

13 “(A) demand response; or

14 “(B) the use of less energy in homes,
15 buildings, or industry through methods such as
16 the installation of more efficient equipment, ap-
17 pliances, or other technologies to achieve the
18 same level of function or economic activity
19 achieved on the date of enactment of this sec-
20 tion.

21 “(5) EXISTING CLEAN ENERGY.—The term ‘ex-
22 isting clean energy’ means, except as provided in
23 paragraph (9)(B), electric energy generated at a fa-
24 cility (including a distributed generation facility)
25 placed in service prior to January 1, 2001, from

1 solar, wind, or geothermal energy, ocean energy, bio-
2 mass (as defined in section 203(a) of the Energy
3 Policy Act of 2005 (42 U.S.C. 15852(a))), or landfill
4 gas.

5 “(6) GEOTHERMAL ENERGY.—The term ‘geo-
6 thermal energy’ means energy derived from a geo-
7 thermal deposit (within the meaning of section
8 613(e)(2) of the Internal Revenue Code of 1986).

9 “(7) INCREMENTAL GEOTHERMAL PRODUC-
10 TION.—

11 “(A) IN GENERAL.—The term ‘incremental
12 geothermal production’ means for any year the
13 excess of—

14 “(i) the total kilowatt hours of elec-
15 tricity produced from a facility (including a
16 distributed generation facility) using geo-
17 thermal energy; over

18 “(ii) the average annual kilowatt
19 hours produced at such facility for 5 of the
20 previous 7 calendar years before the date
21 of enactment of this section after elimi-
22 nating the highest and the lowest kilowatt
23 hour production years in such 7-year pe-
24 riod.

1 “(B) SPECIAL RULE.—A facility described
2 in subparagraph (A) that was placed in service
3 at least 7 years before the date of enactment of
4 this section shall commencing with the year in
5 which such date of enactment occurs, reduce
6 the amount calculated under subparagraph
7 (A)(ii) each year, on a cumulative basis, by the
8 average percentage decrease in the annual kilo-
9 watt hour production for the 7-year period de-
10 scribed in subparagraph (A)(ii) with such cu-
11 mulative sum not to exceed 30 percent.

12 “(8) INCREMENTAL HYDROPOWER.—The term
13 ‘incremental hydropower’ means additional energy
14 generated as a result of efficiency improvements or
15 capacity additions made on or after January 1,
16 2001, or the effective date of an existing applicable
17 State clean portfolio standard program at a hydro-
18 electric facility that was placed in service before that
19 date. The term does not include additional energy
20 generated as a result of operational changes not di-
21 rectly associated with efficiency improvements or ca-
22 pacity additions. Efficiency improvements and ca-
23 pacity additions shall be measured on the basis of
24 the same water flow information used to determine
25 a historic average annual generation baseline for the

1 hydroelectric facility and certified by the Secretary
2 or the Federal Energy Regulatory Commission.

3 “(9) NEW CLEAN ENERGY.—The term ‘new
4 clean energy’ means—

5 “(A) electric energy generated at a facility
6 (including a distributed generation facility)
7 placed in service on or after January 1, 2001,
8 from—

9 “(i) solar, wind, or geothermal energy
10 or ocean energy;

11 “(ii) biomass (as defined in section
12 203(b) of the Energy Policy Act of 2005
13 (42 U.S.C. 15852(b));

14 “(iii) landfill gas;

15 “(iv) new hydropower that does not
16 require the construction of any dam;

17 “(v) new nuclear generation;

18 “(vi) a fuel cell;

19 “(vii) energy efficiency or demand re-
20 sponse as result of programs conducted by
21 the electric utility, as measured and
22 verified by a method acceptable to the Sec-
23 retary;

1 “(viii) an inherently low-emission
2 technology that captures and stores car-
3 bon; or

4 “(ix) such other clean energy sources
5 as the Secretary determines, by regulation,
6 will advance the goals of this section; and

7 “(B) for electric energy generated at a fa-
8 cility (including a distributed generation facil-
9 ity) placed in service prior to the date of enact-
10 ment of this section—

11 “(i) the additional energy above the
12 average generation during the period be-
13 ginning on January 1, 1998, and ending
14 on January 1, 2001, at the facility from—

15 “(I) solar or wind energy or
16 ocean energy;

17 “(II) biomass (as defined in sec-
18 tion 203(b) of the Energy Policy Act
19 of 2005 (42 U.S.C. 15852(b));

20 “(III) landfill gas;

21 “(IV) incremental hydropower; or

22 “(V) incremental nuclear genera-
23 tion; or

24 “(ii) incremental geothermal produc-
25 tion.

1 “(10) OCEAN ENERGY.—The term ‘ocean en-
2 ergy’ includes current, wave, tidal, and thermal en-
3 ergy.”.

4 (b) TABLE OF CONTENTS AMENDMENT.—The table
5 of contents of the Public Utility Regulatory Policies Act
6 of 1978 (16 U.S.C. prec. 2601) is amended by adding at
7 the end of the items relating to title VI the following:

“Sec. 610. Federal clean portfolio standard.”.